

OPNAVNOTE 12432

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File Immediately Following Chapter 430 of
the Federal Personnel Manual

DEPARTMENT OF THE NAVY REDUCTION IN GRADE AND REMOVAL
BASED ON UNACCEPTABLE PERFORMANCE

I. PURPOSE

This instruction establishes the Department of the Navy (DON) regulations for effecting removal and reduction in grade based solely on unacceptable performance.

II. DEFINITIONS

A. "Activity" means a field installation, headquarters command or office.

B. "Critical element" means any requirement of the job which is sufficiently important that inadequate performance of it outweighs acceptable or better performance in other aspects of the job.

C. "Days" means calendar days.

D. "Official" means an employee who has been delegated authority to propose or decide an action under this instruction.

E. "Opportunity to demonstrate acceptable performance" means a chance for the employee to show that the individual can meet established minimum performance standards for the critical elements of the job.

F. "Reasonable time" means an amount of time commensurate with the duties and responsibilities of the employee's job which is sufficient to allow the employee to show whether or not the individual can meet minimum performance standards.

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G. "Reduction in grade" means the involuntary assignment of an employee to a position at a lower classification or job grading level. For purposes of this instruction, a reduction in grade is always to the first step or entry salary level of the grade to which the employee is reduced.

H. "Removal" means the involuntary separation of an employee from employment with an activity except when taken as a reduction-in-force action.

I. "Unacceptable performance" means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

III. COVERAGE

This instruction applies to all DON employees except:

- A. An employee of a non-appropriated fund instrumentality;
- B. An employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
- C. An administrative law judge;
- D. An individual in the Senior Executive Service (SES);
- E. An individual appointed by the President; and
- F. An individual occupying a position not in the competitive service excluded from coverage by regulations of the Office of Personnel Management (OPM).

IV. EXCLUSIONS

- A. An action initiated under authority of the Special Counsel. (5 USC 1206)
- B. An action taken against an administrative law judge. (5 USC 7521)
- C. An action taken in the interests of national security. (5 USC 7532)

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D. An action taken under a provision of statute, other than one codified in 5 USC, which excepts the action from the provisions of 5 USC.

E. A removal from the SES to a civil service position outside the SES.

F. A reduction-in-force action.

G. A voluntary action initiated by the employee.

H. An adverse action for cause.

I. An action which terminates a temporary promotion within a maximum of two years and returns the employee to the position from which the employee was temporarily promoted, or reassigns or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted.

J. An action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment in excess of two years but not more than five years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay.

K. An involuntary retirement because of disability.

L. A termination in accordance with terms specified at the time the appointment was made.

M. An action against a reemployed annuitant.

N. A reduction to the grade previously held by a supervisor or manager who has not completed the supervisory or managerial probationary period.

O. The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed one year of current continuous employment under other than a temporary appointment limited to one year or less.

P. The reduction in grade or removal of an employee in the excepted service who has not completed one year of current continuous employment in the same or similar positions.

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V. DELEGATION OF AUTHORITY

Heads of activities are delegated authority to propose and decide reduction in grade and removal under this instruction. Activity heads shall delegate authority to propose and decide such actions to subordinate supervisors and managers to the extent they deem appropriate.

VI. TIMING OF ACTIONS

A. An employee may be reduced in grade or removed at any time during the performance appraisal cycle that the employee's performance in one or more critical elements of the job becomes unacceptable.

B. An advance notice of proposed action may not be given until the employee has been informed of the unacceptable performance on the critical element(s) of the job and been given a reasonable time to demonstrate acceptable performance. The amount of time deemed reasonable may vary depending upon the complexity of the job; however, it should be consistent within similar job categories.

C. No instance of unacceptable performance more than one year old at the time of the advance notice may be a basis for a proposed removal or reduction in grade.

D. The decision to retain, reduce in grade, or remove must be made within 30 days after the expiration of the notice period.

E. The decision on a notice of proposed action must be delivered to the employee before the effective date of the action.

VII. PROCEDURES

A. An employee whose reduction in grade or removal is proposed is entitled to:

1. Thirty days advance written notice of the proposed action which identifies:

a. Specific instances of unacceptable performance by the employee on which the proposed action is based;

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b. The critical element or elements of the employee's position involved in each instance of unacceptable performance;

c. The name and title of the official designated to hear an oral reply and/or receive the written reply; and

d. The number of days that the employee is allowed to answer orally and in writing;

2. Be represented by an attorney or other representative;

3. A reasonable amount of official time to prepare an answer to the advance notice, if the employee is otherwise in an active duty status;

4. A reasonable time, not less than seven days, to answer orally and in writing; and

5. A written decision which:

a. In the case of reduction in grade or removal specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based;

b. Is signed by an official in a higher position than the official who proposed the action; (If the activity head signed the advance notice, the next higher level of management in chain of command must sign the decision notice.)

c. Specifies the employee's right of appeal to the Merit Systems Protection Board (MSPB) and right, when applicable, to file a grievance under negotiated grievance procedures, but not both; and

d. Provides the time limits for filing an appeal to MSPB, the address of the appropriate Board office for filing the appeal, a copy of the Board's regulations and a copy of the Board's appeal form (Attachment 1).

B. Activity heads are authorized to extend the notice period under VII.A.1., above, for not more than 30 days. This authority shall be redelegated by activity instruction as the

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activity head deems appropriate. Activity heads may extend the notice period under VII.A.1, above, for more than 30 days only with prior approval of OPM. Activity heads are authorized to seek prior approval directly from the Workforce Effectiveness and Development Group, OPM, 1900 E Street, NW, Washington, D.C. 20415.

C. Employees in receipt of an advance notice may request an additional time to respond orally and in writing. The official designated to accept the response may make a decision regarding such request subject to the time limitations set in VI.D and VII.B, above.

→ D. If the employee wishes the activity to consider any medical condition which may contribute to his or her unacceptable performance, he or she shall be given a reasonable time to furnish medical documentation (as defined in CPI 339) of the condition. Whenever possible, the employee shall supply this information at the time the activity offers him or her the opportunity to demonstrate acceptable performance. If the employee offers such documentation after the activity has proposed a reduction in grade or removal, he or she shall supply this information within the time limits allowed for a reply, whenever possible. After its review of the medical documentation supplied by the employee, the activity may, if authorized, require a medical examination or otherwise, at its option, offer a medical examination in accordance with the criteria and procedures of CPI 339. If the employee has five years of civilian service, the activity shall provide information concerning disability retirement. The activity shall be aware of the affirmative obligations of the provisions of 29 CFR 1613.704, which require reasonable accommodation of a qualified handicapped employee. An employee's application for disability retirement shall not preclude or delay any other appropriate personnel action. CPI 831.S10 sets forth the basis under which an activity shall file an application for disability retirement on behalf of an employee. ←

E. An employee's choice of representative may be disallowed if such representation would result in a conflict of interest or position, a conflict with the priority needs of the activity, or would give rise to unreasonable cost to the Government. The terms of any applicable bargaining agreement govern representation for employees in an exclusive bargaining unit:

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1. Activity heads shall redelegate authority to make a determination to disallow the choice of an employee's representative to an appropriate level no lower than the level of the official designated to make the final written decision.

2. Activities' instructions shall establish an expedited process for resolving an employee's disagreement with a determination to disallow a choice of representative. At a minimum, this review process shall require a final decision by an official higher than the one who made the disputed decision.

VIII. ROLE OF PERSONNEL OFFICES

A. The servicing civilian personnel office will provide advice and guidance to individuals involved in reduction in grade or removal actions based on unacceptable performance.

B. The servicing civilian personnel office shall maintain records required by paragraph IX of this instruction. → If medical documentation is furnished by the employee such information will be maintained in accordance with paragraph 1-3e of CPI 339. ←

IX. RECORDS

A. When an action is effected, all relevant documentation concerning a reduction in grade or removal based on unacceptable

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performance will be available for review by the affected employee and the employee's representative. As a minimum, these records shall consist of:

1. A copy of the notice of proposed action;
2. A copy of the employee's written answer, if any;
3. A summary of the employee's oral reply, if one was made;
4. A copy of the notice of decision and the reasons therefor; and
5. Copies of any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

B. The servicing civilian personnel office shall maintain the record for a minimum of one year or until an appeal or complaint arising from an action under this CPI is finally adjudicated, whichever is longer. → If an employee appeals to the MSPB, the record shall be furnished to the employee affected upon the employee's request and to the MSPB. The record shall be submitted to the appropriate field office in the following manner:

1. The documents should be placed in date order with the earliest dated document at the bottom and the latest dated document at the top.
2. A table of contents should be prepared which identifies the case and lists all the enclosed documents (the earliest dated document should be identified and tabbed as number 1, the next document in date sequence should be identified and tabbed as number 2, and so on. The highest number should indicate the most recent document.
3. The table of contents should have the following headings:

<u>Location</u>	<u>Date</u>	<u>Document Description</u>	<u>Source</u>
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(The location indicates the tab number under which the document is filed; the date is the date of receipt or issuance of the document; document description should fully identify the document;

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source should indicate the submitter of the document.)

4. Place the completed table of contents on top of the tabbed documents or, if a manila folder or equivalent is used, place the table of contents on the left side of the folder and the tabbed documents on the right side. ←

C. If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for one year from the date of the advance written notice, any entry or other notation of the unacceptable performance for which the action was proposed shall be removed from any activity record relating to the employee.

X. REPORTS

Statistics on removal and reductions in grade effected under this CPI shall be generated by the Personnel Automated Data Systems (PADS) and reviewed by CNO (Op-14) and the Commandant of the Marine Corps (MPC-30) for Marine Corps activities. Inconsistencies revealed by such review shall be referred to the appropriate level of command for resolution.

XI. EFFECTIVE DATE OF INSTRUCTION

This instruction shall become effective contingent upon publication of one or more performance appraisal systems effected pursuant to 5 USC 4302, the establishment of critical elements and the identification of performance standards for all employees within the work force who perform similar work.

XII. IMPLEMENTING INSTRUCTIONS

Activities are required to issue local instructions implementing this instruction by 1 October 1981.

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